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November 14, 2016

via electronic filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: Notice of *Ex Parte* Meetings
Accessibility of User Interfaces
MB Docket No. 12-108

Dear Ms. Dortch:

On Thursday, November 10, 2016, staff attorney Drew Simshaw of the Institute for Public Representation (IPR), Georgetown Law, Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc., and IPR clinical law student Thomas Koh, met with David Grossman of Commissioner Clyburn's office, Jennifer Thompson of Commissioner Rosenworcel's office, and Holly Saurer of the Chairman's office, regarding the above-referenced docket.¹

We expressed TDI's appreciation for the Commission's efforts to ensure that closed captioning settings are readily accessible to consumers, and its support for the proposed order.

¹ See *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, MB Dkt. 12-108 (Nov. 20, 2015).

* Admitted to the bars of New York and New Jersey. Supervised by a member of the DC bar.

Consistent with comments made by the deaf and hard of hearing Consumer Groups and the Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of Hearing, Gallaudet University, throughout this proceeding, counsel to TDI reiterated that readily accessible captioning settings are critical to deaf and hard of hearing consumers' ability to access closed captions.² If a consumer cannot readily locate and use display settings that allow them to adjust aspects such as the font, size, color, background, and location of closed captioning text, then closed captioning itself is not truly accessible, because the consumer cannot ensure that captions are rendered in a readable and accessible format.

Accessible settings are more important now than ever with the increased volume and variety of both the programming and devices available to consumers, each of which require customization based on a user's particular needs. Consumers who are unable to locate and use closed captioning settings may be discouraged from utilizing closed captioning, or even from using media altogether. For many users who might not be "tech savvy," if these settings are difficult to locate and use once, they will always remain inaccessible.

We also reiterated that captioning settings are currently difficult for many consumers to access. For example, many consumers must search through a series of menus in order to find the buried captioning settings menu. In the case of Netflix, user display settings for many devices can only be changed from Netflix's web interface, and not from a device itself.³ This is challenging for users of closed captioning because the proper settings for a mobile phone may be very different from those of a large television.

In a smaller number of cases, some consumers still use set-top boxes that must be turned off before captioning settings can be accessed. While TDI appreciates and supports Comcast's practice of allowing consumers to upgrade to a newer box with more accessible captioning settings free of charge, TDI is unaware of any other MVPDs with such a policy. Customers of MVPDs other than Comcast are sometimes forced to spend more on a set-top box with features that they do not need, in order to have more readily accessible settings, essentially amounting to a surcharge on accessibility. TDI encourages other MVPDs to follow Comcast's lead in this respect.

Logical and readily accessible interfaces not only enable deaf and hard of hearing consumers to access these critical settings on their personal devices, but also ensure that these settings can be accessed by employees of restaurants, bars, hotels, nursing homes, and hospitals when needed. People who are deaf and hard of hearing rely on these employees when it comes to ensuring that captions in these locations are readable. Therefore, it is essential that captioning setting be readily accessible for everyone.

We again stressed that aggressive enforcement of user interface requirements is imperative to ensure that all responsible parties make captioning settings readily accessible. The

² See, e.g., Comments of Consumer Groups and RERC, MB Dkt. 12-108 (Feb. 24, 2016); Reply Comments of Consumer Groups and RERC, MB Dkt. 12-108 (March 7, 2016).

³ See Netflix Help Center, How do I adjust subtitles, captions and alternate audio on my device? <https://help.netflix.com/en/node/372>.

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volume and variety of devices and programming available to consumers, along with a potentially wide array of differing user interfaces, make it critical that the Commission be proactive with its resolution of consumer complaints regarding captioning settings that are not readily accessible.

Finally, we discouraged the adoption of technical feasibility or achievability exceptions for all parties subject to requirements regarding readily accessible captioning settings. There is no indication that any devices with the processing power to render video and closed captioning, including adjustable settings, would be incapable of presenting captioning settings in a readily accessible way.

We also discourage adopting a two or three year deadline as advocated by some industry commenters because implementation would not require a new product, but only small modifications to products that already exist or are currently being developed. A reasonable, shorter phase-in period should still enable all devices to have readily accessible captioning settings. To the extent that any existing devices are exempt from the requirements established by the Order, requiring covered entities to provide upgrades-upon-request to devices with compliant captioning settings, would be preferable to the status quo.

We appreciate the opportunity to discuss these important topics and look forward to working with the Commission and industry stakeholders to continue to improve the quality of closed captioning for deaf and hard of hearing consumers. We have consulted with other consumer groups, including the National Association of the Deaf and Hearing Loss Association of America, and they give this *ex parte* their full support. Please do not hesitate to contact me if you have any questions regarding this filing.

Respectfully submitted,

/s/

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CC (by email): David Grossman
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